

**NOTICE 338 OF 2010****DEPARTMENT OF TRANSPORT****PUBLICATION FOR COMMENTS OF THE SOUTH AFRICAN MARITIME AND  
AERONAUTICAL SEARCH AND RESCUE AMENDMENT BILL, 2010**

The above- mentioned draft Bill is hereby published for public comments. Interested persons are invited to submit written comments on the draft Bill within 30 days from the date of publication in the *Gazette*.

Submission should be posted to the Director – General Department of Transport for the attention of Mr. Trevor Mphahlele or Patrick Modiba

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## **MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN MARITIME AND AERONAUTICAL SEARCH AND RESCUE AMENDMENT BILL, 2010**

### **1. BACKGROUND**

The South African Search and Rescue Organization was established as an authority responsible for the co-ordination of maritime and aeronautical search and rescue operations within South Africa's search and rescue regions in terms of the South African Maritime and Aeronautical Search and Rescue Act (Act 44 of 2002). The Act provided the requisite legal framework for the provision of a search and rescue service in South Africa and empowered those responsible to carry out this mandate. The Act also incorporated the International Convention on Maritime Search and Rescue, 1979 and Annex 12 to the Convention on International Civil Aviation, 1944, in terms of which search and rescue services are rendered, into South African law.

This Bill amends the South African Maritime and Aeronautical Search and Rescue Act, (Act No. 44 of 2002) (The Act). This Amendment Bill seeks to recognize and give effect to the structural changes introduced to the South African Maritime and Aeronautical Search and Rescue organization after the promulgation of the primary legislation. It also seeks to delegate powers and duties originally bestowed on the Minister to South African Maritime and Aeronautical Search and Rescue office-bearers and Department officials. The Bill further widens the scope under which the Minister may regulate search and rescue matters by way of regulations.

### **2. OBJECTS ON THE BILL**

To amend the South African Maritime and Aeronautical Search and Rescue Act 2002 (Act No. 44 of 2002); and; to insert certain definitions and to amend others; to expand membership of the SASAR; to empower SASAR to perform its function in terms of international agreement outside the Republic's search and rescue region; to empower SASAR to determine procedures for the meetings that need to be followed in the sub-committees of SASAR; to explain how meetings of this committee should be held; to reword certain

sections of the Act; to realign the section of the Act; to delete obsolete provisions; to amend the reference to the Aviation Act, 1962 (Act No 74 of 1962) with the current reference of the South African Civil Aviation Act, 2009 (Act 13 of 2009); to compel license holders of aerodromes, airfields, heliports and helistops to file emergency plans with the rescue co-ordination centre; to expand the reporting centres where a person can report an aircraft or vessel in distress; to spell out the objectives of the aeronautical and maritime rescue co-ordination function; to expand the scope of the regulation making power of the Minister and to provide for matters connected therewith.

### **3. CLAUSE BY CLAUSE OBJECT OF THE BILL**

- 3.1 Clause 1 amends section 1 of the principal Act by substitution of the definition of the word "Act" for a new definition.
- 3.2 Clause 2 further inserts a new definition of the work "Regulations".
- 3.3 Clause 3 amends section 2 and 3 of the principal Act by substituted of certain words for new once e.g. the words "Africa", "Object" substituted for the word "African" and the word "Object" is substituted for the word "Objective".
- 3.4 Clause 4 amends section 5 by expanding the membership of SASAR. The outdated Department's names have been replaced for the new current names. Clause 3 amends section 4 by adding a management committee to be a committee of SASAR. Some words in the wording of section four have been amended in order to make the Act readable.
- 3.5 Clause 5 amends section 6 of the principal Act by substituting certain words for the new once in order to make the Act readable. The clause also empowers SASAR to perform its function to International agreement outside the Republic's search and Rescue regions.
- 3.6 Clause 6 amends section 7 of the principal Act by providing alternate persons who should preside over executive committee meeting of SASAR. The amendment also empowers the SASAR to determine procedures that need to be followed in the subcommittee of SASAR and

- 3.7 Clause 7 amends section 8 of the principal Act by substitution of subsections 1, 2, 3, 4, 5, 6 and 7 for the new subsections. It further explains how the meetings of this committee should be held.
- 3.8 Clause 8 amends section 11 of the principal Act by substitution of certain words for new once in order to make the Act readable.
- 3.9 Clause 9 amends section 12 without changing the meaning of the section 12. The purpose was to realign the section.
- 3.10 Clause 10 amends section 13 of the Act by substitution of certain words like immediate to imminent and by addition of the word "sufficient"
- 3.11 Clause 11 has been amended by only rephrasing the section in order to be readable.
- 3.12 Clause 12 amends section 16 by substitution of the words "route" to "airway" the amendment also delete the whole subsection 5.
- 3.13 Clause 13 amends section 17 in order to make reference to the current Legislation. The Aviation Act, 1962 (Act No. 74 of 1962) is substituted for South African Civil Aviation Act No.13 of 2009.
- 3.14 Clause 14 amends section 18 by placing a duty on all licence holders of aerodromes, airfields, heliports, and helistops to file emergency plans with the rescue co-ordination centre. The amendment also deletes subsection (2).
- 3.15 Clause 15 amends section 19 of the principal Act by placing a duty to any person who believes that an aircraft is in distress to report such incidents.
- 3.16 Clause 16 amends section 20 of the Act by substitution of the heading of section 20 for a new heading. The amendment spell out the objectives of aeronautical and maritime rescue co-ordination functions.
- 3.17 Clause 17 amends section 22 of the Act by placing a duty on SASAR to submit a report on its activities to the Minister once a year

3.18 Clause 18 amends section 23 of the principal Act by expanding the scope of the regulation making powers of the Minister.

3.19 Clause 19 provides for the short title of the Act as the South African Maritime and Aeronautical Search and Rescue Amendment Act 2010.

#### **4. CONSULTATION**

The draft Bill is currently published for comments and will be circulated to all relevant stakeholders for comments.

#### **5. FINANCIAL IMPLICATIONS**

None.

#### **6. IMPLICATION TO PROVINCES**

None.

#### **7. IMPLICATIONS TO MUNICIPALITIES**

None.

#### **8. PARLIAMENTARY PROCEDURE**

The Department of Transport is of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution.

**REPUBLIC OF SOUTH AFRICA**

**SOUTH AFRICAN MARITIME AND AERONAUTICAL SEARCH AND RESCUE  
AMENDMENT BILL, 2010**

.....  
(As introduced in the National Assembly (proposed section 75); explanatory summary of  
Bill published in Government Gazette No. of ) The English text is the official  
text of the Bill)  
.....

(MINISTER OF TRANSPORT)

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**GENERAL EXPLANATORY NOTE:**

[            ] Words in bold type in square brackets indicate omissions from existing enactments.

————— Words underlined with a solid line indicate insertions in existing enactments.

**BILL**

To amend the South African Maritime and Aeronautical Search and Rescue Act 2002 (Act No. 44 of 2002); so as to insert certain definitions and to amend others; to expand membership of the SASAR; to empower SASAR to perform its function in terms of international agreement outside the Republic's search and rescue region; to empower SASAR to determine procedures for the meetings that need to be followed in the sub-committees of SASAR; to explain how meetings of this committee should be held; to reword certain sections of the act; to realign the section of the Act; to delete obsolete provisions; to amend the reference to the Aviation Act, 1962 (Act No 74 of 1962) with the reference of the South African Civil Aviation Act, 2009 (Act 13 of 2009); to compel license holders of aerodromes , airfields , heliports and helistops to file emergency plans with the rescue co-ordination centre; to expand the reporting centres where a person can report an aircraft or vessel in distress ; to spell out the objectives of the aeronautical and maritime rescue co-ordination function; to expand the scope of the regulation making power of the Minister; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows-

**1. Amendment of section 1 of Act 44 of 2002**

Section 1 of the Principal Act is amended by;

(a) the substitution of the definition of "**this Act**" after the definition of "**the Convention**".

"this Act" means the South African Maritime and Aeronautical Search and Rescue Amendment Act No. ....2010;

(b) the insertion of the definition of “ regulations ” after the definition of “ prescribe ”

“ regulations ” means regulations prescribed by the Minister in terms of this Act”

## 2. Amendment of section 2 of Act 44 of 2002

Section 2 of the Principal Act is hereby amended by the substitution of subsection (1) (a) and (b) for the following subsection;

(1) The principal objects of this Act are to –

(a) Incorporate the Conventions into South [Africa] African law; and

(b) establish the South African Search and Rescue Organisation to act on behalf of the Department as the [a] Authority responsible for the application of the Conventions as well as other conventions binding on the Republic regarding maritime and aeronautical search and rescue operations.

## 3. Amendment of section 4 of Act 44 of 2002

Section 4 of the principal Act is hereby amended by;

(a) the substitution of the heading for the following heading;

“Establishment and [object] objectives of South African Search and Rescue Organisation”

(b) the substitution of subsection (2) for the following subsection;

“(2) The [object] objectives of SASAR [is] are to ensure a co-ordinate and effective maritime and aeronautical search and rescue services within the South African search and rescue regions.”

(c) by the addition of subsection (3) after subsection (2).

“(3) Any person appointed in terms of this Act or involved with the carrying out of the provisions thereof must perform his or her functions pursuant to the objectives of SASAR.”

## 4. Substitution of section 5 of Act 44 of 2002



Section 5 of the principal Act is hereby amended by;

(a) the substitution of subsection (1) for the following subsection;

“(1) The following persons must be members of SASAR and must appoint mandated representatives to serve therein-

- (i) The Department;
- (ii) The South African Maritime Safety Authority;
- (iii) The South African Civil Aviation Authority;
- (iv) The Air Traffic and Navigation Services Company Limited;
- (v) The South African National Defense Force;
- (vi) The South African Police Service;
- (vii) The National Ports Authority;
- (viii) The Department of Cooperative Governance and Traditional Affairs;
- (ix) The Department of International Relations & Cooperation
- (x) The Department of Home Affairs;
- (xi) The Department of Environmental Affairs;
- (xii) The Department of Health;
- (xiii) The South African Weather Services;
  
- (xiv) commercial and voluntary organizations who are signatories to the SASAR Manual as contemplated in section 15 of this Act, may also be members.”

(b) by substitution of subsection (2) (b) and (c) for the following subsection;

“(2) SASAR is composed of the following Committee:

- (b) a management committee;
- (c) a maritime sub-committee and;

(c) by the addition of subsection (d) after subsection (c);

(d) an aeronautical sub-committee.

(d) by substitution of subsection (4) (b) for the following subsection;

“(4) The executive committee must--

- (b) determine the size and composition of the committees of SASAR depending on the areas of [speciality] expertise of the different members of SASAR.

(e) by the addition of subsection (c) after subsection (b);

**(c) make recommendations to the Minister with regard to the governance of SASAR matters.**

(f) by substitution of subsection (5) for the following subsection;

**“(5) The maritime and the aeronautical sub-committees must **[assess]** regularly review the operational policy of SASAR and make recommendations to the **[executive]** management committee. **[whenever any change is necessary].**”**

(g) by substitution of subsection (7) (a), (b) and (c) for the following subsection:

**“(7) The Director-General must appoint suitable persons from among the members of SASAR to serve as-**

**(a) The head of SASAR, who is the chairperson of the executive committee and responsible for search and rescue **[operations by SASAR]** services.**

**(b) The head of aeronautical search and rescue operations who is the chairperson of the aeronautical sub-committee;**

**(c) the head of maritime search and rescue operations, who is the chairperson of the maritime sub-committee .**

(h) by substitution of subsection (8) for the following subsection;

**“(8) The different heads contemplated in subsection (7) must ensure that search and rescue operations are conducted in accordance with laid down standards and recommended practices as reflected in the SASAR Manual **[and as considered the norm in terms of international agreements]** and International Conventions.”**

(i) by the addition of subsection 9 after subsection 8

**“(9) The Department shall be the custodian of all SASAR matters.”**

#### **5. Amendment of section 6 of Act 44 of 2002**

Section 6 of the principal Act is hereby amended by the substitution subsection 4 and 5 the following subsection:

**“(4) SASAR must perform its functions in a manner which **[promotes efficient]** is [economic] effective, efficient **[use of all resources]** and economical.”**

“(5) [In performing its functions] SASAR [must endeavour to co-operate with disaster management agencies established in terms of any] may perform its functions outside the Republic’s search and rescue regions in terms of international agreements.”

#### 6. Amendment of section 7 of Act 44 of 2002

Section 7 of the principal Act is hereby amended by;

(a) the substitution of subsections (2) and (3) of the following subsections:

“(2) The Head of SASAR or his/her designate must preside over any executive committee meeting of SASAR.”

“(3) The executive committee must determine the rules of procedure [at any meeting] of all the committees and sub-committees of SASAR.”

(b) by the addition of subsection 4 after subsection 3

“(4) The Head of the Secretariat or his/her designate must preside over any management committee meeting of SASAR.”

#### 7. Amendment of section 8 of Act 44 of 2002

Section 8 of the principal Act is hereby amended by substitution of subsections 2, 3,4,5,6 and 7 for the following subsections

“(2) The first meeting of any sub-committee of SASAR after the commencement of the Act must be held at the time and place determined by the Head of SASAR and all meetings thereafter must be held at the time and places that the sub-committee determines.

“(3) The chairperson of a committee or sub-committee may at any time call a special meeting of the committee or sub-committee to be held at the time and place determined by the chairperson.

“(4) All members of a committee or sub-committee must be notified in writing of any meeting of that Committee or sub-committee.

“(5) (a) A majority of the total number of members forms a quorum at any meeting of a committee or sub-committee.

“(b) A decision agreed on by a majority of the members present at a duly constituted meeting of a committee or sub-committee shall be binding on all members.

“(6) In the event of an equality of votes on any matter, the chairperson of the relevant meeting has a casting vote in addition to a deliberative vote.

(7) Each committee or sub-committee must meet at least twice a year."

#### **8. Amendment of section 11 of Act 44 of 2002**

Section 11 of the principal Act is hereby amended by;

(a) the substitution of subsection (2)(a), subsection (4) and (5) for the following subsections:

"(2) Any designation contemplated in subsection (1) must be-

(a) done in accordance with **[an] a service** agreement reached with the applicable organization or institution; and"

"(4) Each chief of a rescue co-ordination centre or sub centre must establish and preside over an operational committee to **[discuss] ensure continued effectiveness of [evaluate and effect]** operational procedures."

"(5) Operational committees must consist of **[representing organizations]** mandated representatives of persons controlling the resources available to that rescue co-ordination centre or rescue subcentre".

#### **9. Amendment of section 12 of Act 44 of 2002**

Section 12 of the Act is hereby amended by;

the substitution for subsection (1) of the following subsection:

"(1) A chief of a rescue co-ordination centre or any person authorized by him or her is responsible for co-ordinating the best available resources for the purpose of searching, assisting and, where appropriate, effecting a rescue operation in its search and rescue region"

#### **10. Amendment of section 13 of Act 44 of 2002**

Section 13 of the principal Act is hereby amended by substitution of subsection (2) (a) and (b) for the following subsections:

"(2) In a case where the Minister contemplates requisitioning a civilian aircraft or vessel or instructing a civilian holder of a South African aircraft flight crew license or the master of a vessel, the Minister may do so only if-

(a) human life is in **[immediate] imminent** and grave danger; and

(b) there are insufficient or no other means available to conduct the operation".

### 11. Amendment of section 15 of Act 44 of 2002

Section 15 of the principal Act hereby amended by:

(a) the substitution of the heading for the following heading;

“SASAR manuals and responsibilities of signatories thereto”

(b) substitution for subsection (1) of the following subsection;

“(1) SASAR must compile manuals regarding search and rescue services and operations and matters connected therewith and keep **[that]** those manuals up to date”.

### 12. Amendment of section 16 of Act 44 of 2002

Section 16 of the principal Act is hereby amended by

(a) the substitution of subsection (2)(b) for the following subsection;

“(2) (b) conducted in airspace within which air traffic control services are provided, except for flights crossing **[a route]** an airway at right angles; or”

(b) by the substitution of subsection (4)(a) for the following subsection;

“Search and rescue action may be instituted-

“(4)(a) In respect of a flight for which no flight plan has been filed, when information that the aircraft is overdue or missing is received from any source; or”

(c) by deletion of subsection (5)

“**[(5) In an event contemplated in subsection (4), authorization by the head of SASAR or his or her assignee must be obtained prior to the commencement of a search and rescue operation and he or she must kept informed of the progress made and the termination of the search and rescue.]**”

### 13. Amendment of section 17 of Act 44 of 2002

Section 17 of the principal Act is hereby amended by substitution of subsection (1) for the following subsection;

“(1) The owner of any aircraft or vessel required to carry emergency locator beacons in terms of the Merchant Shipping Act, 1951 (Act No 57 of 1951) or the **[Aviation Act, 1962 (Act No 74 of 1962)]** South African Civil Aviation Act, 2009 (Act 13 of 2009), as the case may be, must register such emergency locator beacons with the organizations or institutions designated in terms of section 11 (1) (d)”.

**14. Amendment of section 18 of Act 44 of 2002**

Section 18 of the principal Act is hereby amended by;

(a) the substitution of the heading for the following heading;

“Filling of [disaster management and] aerodrome emergency plans”

(b) The substitution of subsection (1) of the following subsection;

“(1) All [aerodrome managers] licence holders of aerodromes/airfields/heliports/helistops must file their emergency plans and any amendments thereto with the aeronautical rescue co-ordination centre”.

(c) the deletion of subsection (2)

“[(2) All heads of disaster management agencies established in terms of any law providing for the management of disasters must file their emergency plans in respect of aircraft and vessels incidents, and any amendments thereto, with the aeronautical rescue co-ordination centre]”.

**15. Amendment of section 19 of Act 44 of 2002**

Section 19 of the principal Act is hereby amended by;

(a) the substitution of subsection (1) and (2) of the following subsections:

“(1) Any person who knows or has reason to believe that an aircraft or vessel is in distress must report the occurrence at the police station nearest to that person or at [such other office or facility or to a dedicated emergency number as the executive committee may determine] a Rescue Co-ordination Centre, police station, port control or airport nearest to that person.”

“(2) The Head of SASAR must publish the addresses and telephone numbers of the offices or facilities contemplated in subsection (1) by means of the printed and electronic media so as to ensure wide publicity.”

**16. Amendment of section 20 of Act 44 of 2002**

Section 20 of the principal Act is hereby amended by

(a) the substitution of the heading for the following heading;

“Co-operation between aeronautical [rescue co-ordination centre] and maritime rescue co-ordination [centre] function”

(b) substitution of subsections (1) of the following subsection;

“(1) The aeronautical and maritime rescue co-ordination [**centre and the maritime rescue coordination centre**] functions must exchange information freely and regularly to ensure effective and efficient provision of a search and rescue service”.

(c) by substitution of subsection (2) for the following subsection;

“(2)(a) The aeronautical and maritime rescue co-ordination functions must; hold joint exercises at least once a year and report to the Executive Committee:”

(b) The objectives of the exercise shall be to:

(i) foster and maintain close co-operation; and

(ii) test SASAR’s capability to deal with search and rescue operation.”

(d) by substitution of subsection (4) for the following subsection;

“(4) The head of SASAR must ensure that the exercises contemplated in subsection (3) are organised in conjunction with both the aeronautical [**rescue**] and maritime rescue co-ordination [**centre and the maritime rescue co-ordination centre**] functions.”

#### **17. Amendment of section 22 of Act 44 of 2002**

Section 22 of the principal Act is hereby amended by:

(a) the substitution of the heading for the following heading;

“Reports”

(b) the substitution of subsection (1) for the following subsection:

“(1) SASAR must furnish the Minister with:

(a) a report on its activities at least once a year in terms of the Public Finance Management Act; and

(b) any other report whenever required by the Minister.”

#### **18. Amendment of section 23 of Act 44 of 2002**

Section 23 of the principal Act is hereby amended by

(a) the substitution of subsection (1) for the following subsection;

“(1) The Minister may, by notice in the Gazette, make regulations regarding the following matters-

(a) the conditions which must be complied with when a person from another country which is a party to the conventions wishes to enter the Republic for purposes of any search and rescue operation (to be deleted);

(b) SAR governance, co-ordination and oversight;

(c) SAR procedures and processes;

(d) SAR standards and recommended practices;

(e) SAR communications and associated technological developments

(f) anything which must or may be prescribed in terms of this Act;

(g) any matter which is necessary or expedient to prescribe for the effective carrying out or implementation of this Act;

(h) penal provisions relating to search and rescue matters

(b) by the deletion of subsection (2)

**“[(2) Any regulation made under subsection (1)(a) must be made with the concurrence of the Minister of Home Affairs .]”**

#### **19. Short title**

This Act is called the South African Maritime and Aeronautical Search and Rescue Amendment Act, 2010.